Supreme Court, U.S.
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No. 99-594

In The
Supreme Court Of The United States

KANE FISHER AND SALVORS, INC., et al., Petitioners,
v.
UNITED STATES OF AMERICA, Respondent.

Petitioners' Reply Brief And Suggestion For Response By Solicitor General

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit,

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WILLIAM VANDERCREEK*
*COUNSEL OF RECORD
W. SCOTT NEWBERN
Post Office Box 1328
Tallahassee, Florida 32302
Tel/Fax (850) 561-9147

COUNSEL FOR KANE FISHER, SALVORS, INC. AND MOTIVATION, INC.

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PETITIONERS' REPLY BRIEF AND SUGGESTION FOR RESPONSE BY SOLICITOR GENERAL

The Solicitor General on November 5, 1999, waived response to Petition, including the United States' answer to the critical issue: *Whether the Florida Keys National Marine Sanctuary Act requires submission of proposed rules and regulations, after opportunity for public input, to Congress and to the State of Florida before implementation.* The Solicitor General, of course, would be pleased to respond should this Court desire the answer.

The State of Florida's answer is set out in the Governor of Florida's certification to the Secretary of Commerce and resolution of the Florida Cabinet promulgated at 62 F.R. 32154, *et seq.* (June 12, 1997). The United States

(NOAA) accepted the objection and adopted changes for the public regulations duly codified in 15 C.F.R. § 922, *et seq.*

Unlike the Solicitor General, Petitioners have no authority to speak for the United States in answer to the critical question. Petitioners respectfully do submit that NOAA's 1997 actions and responses constitute an acknowledgement that proposed rules must be submitted. Petitioners further submit this acknowledgement should control over the contrary position taken by NOAA in its 1998 representations to the Eleventh Circuit (see Appendix to *Amicus Curiae* Brief in Support of Petition filed by Southeastern Fisheries, Inc. and Monroe Commercial Fishermen).

Unquestionably this Court has the full competence to resolve the issue whether the Sanctuary Act mandates submission of proposed rules. The answer is not only decisive to this case, it is critical to the ongoing processes emanating from the requirement that national marine sanctuaries, together with their rules and regulations, be re-evaluated every five years. 16 U.S.C. § 1434(e). The provisions providing for the right of public input would become meaningless if the Sanctuary Act provisions for submission of proposed rules were considered discretionary. Response by the Solicitor General on behalf of the United States would be most illuminating.

Respectfully,

WILLIAM VANDERCREEK
COUNSEL OF RECORD
Post Office Box 1328
Tallahassee, Florida 32302
Tel/Fax (850) 561-9147